IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 757 of 2001
(old no. 296/94)

New India Assurance Company
Limited, Haldwani …… Appellant

Versus

Smt. Panuli Devi & others ……. Respondents

Mr. R.B. Agarwal, learned counsel for the appellant.
Mr. Amit Bhatt, learned counsel for the respondents.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

(Delivered by Hon'ble P.C. Pant, J.)

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 16.08.1994 passed by Shri P.D. Dhaundial, the then learned IV Additional District Judge / Presiding Officer, Motor Accident Claims Tribunal, Nainital whereby in M.A.C. Case No. 191 of 1988 the Tribunal has awarded Rs. 2,25,000/- as compensation to the applicants.

2. Brief facts of the case giving rise to the present appeal are that on 10.01.1988, Padam Singh (deceased) was travelling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Shri Padam Singh (deceased) and many other passengers got burn injuries and died. The deceased was a farmer and he also used to run diary business besides doing the business of selling goats. Smt. Panuli Devi,

claimant No. 1 is widow of the deceased while Gopal Singh (claimant No. 2), Gulab Singh (claimant No. 3), Kunwar Singh (claimant No. 4), Km. Radha (claimant No. 5), Madan Singh (claimant No. 6), Km. Paruli Devi (claimant No. 7) and Km. Rekha (claimant No. 8) are daughters and sons of the deceased. Claimant Nos. 3 to 8 are minors. Opposite party No. 1, Kanta Devi was owner of the vehicle and New India Assurance Company Ltd. (present appellant) was the company with whom the vehicle was ensured. Opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial Court, the owner of the vehicle has admitted the accident and death of the passengers including that of Shri Padam Singh. However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No .2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. Learned Presiding officer of the trial after examining the pleas, framed following issues:

i) Whether, the bus was being driven at the relevant time for and on behalf of opposite party No. 4? If so, its effect?

ii) Whether, in the accident in question on account of which Padam Singh died was due to rash and negligent driving of the driver of the bus?

iii) Whether, on the date of the alleged accident the bus in question was being driven on behalf of opposite party No. 1 or whether O.P. No. 1 was not the owner of the vehicle and had no control over the vehicle and the driver?

iv) Whether, at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

v) Which of the opposite parties is liable to pay compensation of the claimants?

vi) To what amount of compensation, if any, the claimants are entitled?

vii) Whether, the bus was owned by opposite party No. 4 on the date of accident, if so, its effect?

5. After recording the evidence of the parties and hearing them, learned Presiding officer of the Tribunal has found that the accident in question has taken place due to the rash and negligent driving on part of the driver, who was employed by opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The Tribunal also came to the conclusion that the claimants are entitled to compensation to the tune of Rs. 2,25,000/- and the New India Assurance company Ltd., with whom the vehicle was ensured was liable to pay it. Accordingly, the Award was passed for the sum along with 10% interest on the amount of compensation. Aggrieved with the Award, New India Assurance Company Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record. Evidence on record shows that monthly income of the deceased was Rs. 2,000/-. Considering the number of family members of the deceased it is evident that out of this amount the deceased would have been spending Rs. 1,500/- on his family. So the amount of Rs. 1,500/- was reasonable on account of monthly loss of the family. The age of deceased was 48 years.

As such multiplier of 12 is reasonable. The amount of compensation thus arrived is as under:

1500 x 12 x 12 = Rs. 2,16,000/-

7. Keeping in view that the deceased was sole bread earner and also that the deceased has six minor children and a wife, an amount of Rs. 9,000/- on account of mental pain and sufferings will be reasonable in this case. Thus, total amount of compensation in this case comes out to Rs. 2,25,000/- which is liable to be paid by the present appellant i.e. New India Assurance Company Ltd.

8. In view of the aforesaid facts and circumstances of the case, we find no fault in the order passed by the Claims Tribunal while awarding compensation to the extent of Rs. 2,25,000/- along with 10% interest per annum from the date of petition till the date of actual payment. Therefore, the appeal is devoid of merits and is, hereby dismissed. No order as to costs. Amount deposited by the appellant in this court, if any, shall be transmitted to the M.A.C.T. concerned for its disbursement amongst the claimants of the deceased.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt: 07.07.2004
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